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REMARKS

The Office Action dated February 9, 2005 has been received and carefully considered. In this response, claims 1, 5, 9, 10, 13, 16, 20, 21, 22, 27, and 32 have been amended. These amendments were made to correct informalities, remove unnecessary "step for" language, and improve claim consistency. The amendments do not narrow the scope of the claims. Reconsideration of the outstanding objections and/or rejections in the present application is respectfully requested based on the following remarks.

Allowance of Claims 5-9

Applicant notes with appreciation the indication on page 5 of the Office Action that claims 5-9 are allowed.

Election/Restrictions

At page 2 of the Office Action, the Office has required restriction under 35 U.S.C. 121. Applicant affirms that he has made a provisional election with traverse to prosecute claims 5-9, 10-21 and 29-31. The status of the claims reflects this election.

Claim Objections

At page 3 of the Office Action, claim 5 was objected to because of informalities. Claim 5 has been amended to correct these informalities.

Rejection of Claims 10-21 and 29-31

At page 3 of the Office Action, claims 10-21 and 29-31 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,490,250 to Hinchley et. al. (hereinafter "Hinchley"). Applicant respectfully traverses this rejection. Hinchley fails to disclose each and every element of independent claims 10 and 29, and also fails to disclose each and every element of claims 11-21 and 30-31 at least by virtue of their dependence on claims 10 and 29, respectively.

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Claim 10, from which claims 11-21 depend, recites the elements of “determining a desired bit-rate of a received transport stream” and “determining a current bit-rate of the received transport stream.” At page 3 of the Office Action, the Examiner asserts that these elements are disclosed by Hinchley at FIG. 9, element 900 and FIG. 10, element 1000. Applicant respectfully traverses this assertion and submits that Hinchley fails to disclose these elements.

Hinchley does not disclose receiving a transport stream. The portions of Hinchley cited by the examiner do not disclose that a transport stream is received. Hinchley is clear that element 900 of FIG. 9 and element 1000 of FIG. 10 refer to elementary data streams rather than transport streams. *Hinchley*, col. 8, lines 8-12 and col. 8, lines 31-33. One of ordinary skill in the art will appreciate that an elementary data stream is not the same as or equivalent to a transport stream. Instead, the system of Hinchley receives multimedia data from a data source. Multimedia encoders encode the data into an MPEG format. The encoders generate “elementary data streams” that are provided to a processor, where they are combined into a transport stream. *See Hinchley*, col. 3, line 3-col. 4, line 17. Thus, Hinchley teaches *generating* a transport stream, rather than *receiving* a transport stream. Hinchley further discloses that the data rate of the elementary streams may be adjusted to a desired data rate. *Hinchley*, col. 8, lines 8-44. The elementary streams are combined into a transport stream for transmission. *Hinchley*, col. 2, lines 4-24. The transport stream disclosed in Hinchley is not “received”, as recited in Claim 1 and therefore Hinchley fails to disclose the features of determining a desired bit-rate of a received transport stream and determining a current bit-rate of the received transport stream as recited by claim 10.

Accordingly, Hinchley fails to disclose each and every element of claim 10.

With respect to claims 11-21, these claims depend from claim 10. Accordingly, Hinchley fails to disclose each and every element of these claims at least by virtue of their dependence on claim 10. Moreover, these claims recite additional features not disclosed by Hinchley.

For example, with respect to claim 11, the claim recites the elements of “wherein the desired bit-rate is based on calculating a desired elapsed time between consecutive program clock references included in the received transport stream.” As discussed above, Hinchley does not disclose a received transport stream nor does Hinchley does not disclose clock references

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included in a received transport stream. While Hinchley discloses determining a data rate for a data stream by computing the number of bits transmitted over a given period of time, this is not the same or equivalent to calculating a desired elapsed time between consecutive program clock references included in the received transport stream as provided by claim 11. *See Hinchley, col. 6, lines 26-35.* Accordingly, Hinchley fails to disclose each and every element of claim 11.

With respect to claim 29, the claim recites a program of instructions to "determine a desired bit-rate of a received transport stream" and to "determine a current bit-rate of the received transport stream." As discussed above with respect to claim 10, Hinchley fails to disclose these elements. Accordingly, Hinchley fails to disclose each and every element of claim 29.

Claims 30 and 31 depend from claim 29. Therefore Hinchley fails to disclose each and every element of claims 30 and 31, at least by virtue of their dependency on claim 29. Moreover, these claims recite additional features not disclosed by Hinchley.

For example, with respect to claim 30, the claim recites, "the desired bit-rate is based on calculating a desired elapsed time between consecutive program clock references included in the received transport stream." As discussed above with respect to claim 11, Hinchley does not disclose these elements. Accordingly, Hinchley fails to disclose each and every element of claim 30.

As discussed above, Hinchley fails to disclose each and every element of claims 10-21 and 29-31. In view of the foregoing, it is respectfully submitted that the anticipation rejection of claims 10-21 and 29-31 is improper, and the withdrawal of such rejection is respectfully requested.

Conclusion

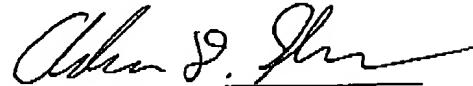
It is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

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The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account Number 50-0441.

5/9/2005
Date

Respectfully submitted,



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